REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7611 OF 2022

Dental Council of India …Appellant

Versus

Sailendra Sharma and Others …Respondents

WITH

CIVIL APPEAL NO. 7613 OF 2022
(Arising out of SLP(Civil) No.18681 of 2022 @
Diary No. 44009/2018
CIVIL APPEAL NO. 7612 OF 2022
(Arising out of SLP(Civil) No.33527 of 2018

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 20.08.2018 passed by the High Court of Chhattisgarh at Bilaspur in Writ Petition No. 1649/2018 and other allied writ petitions, by which the High Court has allowed the said writ petitions

preferred by the respondents – students and has quashed and set aside the communication dated 6.6.2018 of the State of Chhattisgarh annulling/cancelling the admissions of the respective respondents – original writ petitioners in the Postgraduate Dental Course, the Dental Council of India has preferred the present appeals.

2. The facts leading to the present appeals in a nutshell are as under:

The National Board of Examination conducted NEET MDS 2018 for admission in various Postgraduate Course in Dental Sciences. The result of the NEET MDS 2018 was published on 31.01.2018. A merit list was prepared for the State of Chhattisgarh. The admissions in the Postgraduate Course in Dental Sciences were to be made through counselling by the State Government. The admission process was required to be completed on or before 31.05.2018 before 4:30 p.m.

2.1 As per the procedure and the relevant rules and regulations, namely, Chhattisgarh Dental Medicine Postgraduate Admission Rules, 2017 and the provisions of the Dentists Act, 1948 and MDS Course Regulations, 2017, the particulars of the seats were required to be intimated to the State Government and Directorate of Medical Education, Raipur, Chhattisgarh and as observed hereinabove the admissions were to be given on merits on the basis of the counselling made by the State Government. As per the procedure, after the first round of counselling, there shall be second round of counselling and thereafter the mop up

round of counselling. In the present case, the dispute is with respect to three Dental Colleges, namely, New Horizon Dental College Research Institute, Bilaspur (for short, 'New Horizon College'), Maitri College of Dentistry and Research (for short, 'Maitri College'), Anjora Durg and Rungta College of Dental Sciences and Research, Bhilai (for short, 'Rungta College'). New Horizon College intimated seven seats to be included in the mop up round, Maitri College intimated nine seats to be included in the mop up round and Rungta College intimated fifteen seats to be included in the mop up round.

2.2 The Directorate of Medical Education notified the vacant seats including the vacant seats in the aforesaid three colleges on 29.05.2018 to be filled up in mop up round of counselling on the basis of intimation provided by the private colleges including the above three colleges. The vacant seats of the above three colleges were notified in the notice by the Directorate of Medical Education.

2.3 74 candidates appeared for mop up round of counselling before the Directorate on 30.05.2018 including the original writ petitioners, seven in numbers. Out of 74 candidates, 43 candidates were allotted seats. In the mop up round after counselling, New Horizon College was allotted seven seats against seven vacant seats available in the college. Maitri College was allotted nine students against nine vacant seats available in the college and Rungta College was allotted thirteen

students against fifteen seats available in the college and two seats remained vacant.

At this stage, it is required to be noted that total number of vacant seats for all five colleges were 46 and out of 46, 43 seats were allotted to students in various colleges including the above three colleges. Out of allotment of 43 seats, 35 candidates joined and 8 seats remained vacant due to non-joining. Thus, only three seats remained unallotted after mop up round of counselling. One seat remained vacant in Chhattisgarh Dental College and two seats remained vacant in Rungta College. The Directorate, on receiving the information of the above vacant seats from the colleges, immediately sent list of 30 students for filling three vacant seats in the ratio of 1:10 according to merit list of the students to the principal of two Dental Colleges where seats were unallotted.

2.4 The names of the respondents – original writ petitioners were not included in the list of thirty-five candidates as they were not allotted seats by the Directorate. It appears that the students allotted to the above three colleges, who were allotted seats after the mop up round of counselling, some of them did not join the course and those seats remained vacant on 31.05.2018. Without any intimation to the Directorate about the vacant seats remained vacant on 31.05.2018, the above three colleges unilaterally granted admission to the original writ

petitioners on 31.05.2018 after 4:30 p.m. That thereafter the above colleges intimated the Directorate on 31.05.2018, after the admissions were granted to the original writ petitioners, that they had filled the vacant seats.

2.5 Having come to know about the above illegality in giving admission to the original writ petitioners without any intimation and/or without disclosing the vacant seats to the State Government, *vide* communication dated 6.6.2018, the Directorate/State Government cancelled the admissions given to the original writ petitioners. Communication dated 6.6.2018 annulling/cancelling the admission of the original writ petitioners, which were illegally given on 31.05.2018 after 4:30 p.m., was the subject matter of writ petitions before the High Court. The High Court by way of interim order stayed communication dated 6.6.2018 and directed to continue the admission of the original writ petitioners. That thereafter, by the impugned judgment and order, the High Court has allowed the writ petitions by quashing and setting aside the communication dated 6.6.2018 and has directed that the respective writ petitioners will be allowed to complete their course by observing in paragraph 21 as under:

> "This Court can only observe that may be in absence of proper communication or some vaccum subsisting in the directive or the rules the same has been utilised or exploited by the colleges in question but since these admissions have already been granted and courses have begun and when these writ applications were initially taken up, interim protection was granted in favour of the petitioners, holding that there was a strong

prima facie case in their favour in continuance of their education in the respective colleges, this Court holds in favour of the petitioners."

2.6 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court, the Dental Council of India has preferred the present appeals.

3. Shri Gaurav Sharma, learned counsel appearing on behalf of the Dental Council of India has vehemently submitted that in the present case the High Court has seriously erred in quashing and setting aside communication dated 6.6.2018 issued by the Directorate/State Government annulling/cancelling the admission of the private respondents herein – original writ petitioners.

3.1 It is submitted that by quashing and setting aside communication dated 6.6.2018 protecting the admission of the respondents, the High Court has perpetuated the illegality committed by the concerned institutions/colleges in admitting the students/original writ petitioners illegally.

3.2 It is submitted that the respective original writ petitioners were admitted in the respective private institutions/colleges *de hors* the policy, rules, regulations and the procedure to be followed for the purpose of admission in postgraduate. It is submitted that the admissions were required to be given only through the counselling by the Directorate. It is submitted that in the present case, without intimating the State

Government/Directorate about the vacant seats, unilaterally the private institutions/colleges granted admissions to the original writ petitioners by backdoor. It is submitted that therefore the High Court has materially erred in directing that the original writ petitions be allowed to complete their course.

3.3 It is submitted that as soon as the State Government/Directorate came to know about such an illegality and the illegal admissions granted by the private institutions/colleges, immediately the State Government acted and cancelled/annulled the admissions *vide* communication dated 6.6.2018. It is submitted that thereafter the respective original writ petitioners continued to study pursuant to the interim order passed by the High Court. It is submitted that continuation of the course/study of the original writ petitioners pursuant to the interim order passed by the High Court cannot be a ground to allow them to continue to complete their course subsequently.

3.4 Making the above submissions and relying upon the decision of this Court in the case of ***Abdul Ahad and Others v. Union of India and Others, 2021 SCC OnLine SC 627*** and the recent decision of this Court in the case of ***Board of Governors in Supersession of Medical Council of India v. Dr. Priyambada Sharma & Others (Civil Appeal Nos. 7533-7534/2011 arising out of Special Leave Petition (Civil)***

Nos.3507-3508/2020, decided on 17.10.2022), it is prayed to allow the present appeals.

4. Learned counsel appearing on behalf of the State has adopted the submissions made by the learned counsel appearing on behalf of the Dental Council of India and prayed to allow the present appeals and quash and set aside the impugned judgment and order passed by the High Court directing the original writ petitioners to continue/complete their postgraduate course, who were given admissions illegally by the private institutions/colleges.

5. Shri Yatinder Singh, learned Senior Advocate appearing on behalf of the private institutions/colleges has submitted that as by 31.05.2018 at 4:30 p.m., the seats remained vacant and therefore the private institutions granted admissions to the students so as to see that the seats are not wasted.

5.1 It is submitted that all the students who were granted admissions were all meritorious students and therefore the merits have not been given go bye.

5.2 It is submitted that in fact the particulars of the vacant sears were displayed and only thereafter admissions were given.

5.3 It is submitted that now as the students have completed their course, they may be permitted to complete their course and the results be declared.

6. Learned counsel appearing on behalf of the original writ petitioners – students has also prayed to permit them to complete their course and declare their results by submitting that by now they have already completed their course.

7. In rejoinder and on the submission made on behalf of the private institutions/colleges that the respective students – original writ petitioners were granted admission on the seats remained vacant on 31.05.2018 at 4:30 p.m. and therefore to see that the seats are not wasted, the admissions were given, it is vehemently submitted by the learned counsel appearing on behalf of the Dental Council of India that merely because the seats remained vacant cannot be a ground to grant admissions *de hors* and without following the due procedure and even go bye to merits. Reliance is placed on the decision of this Court in the case of ***Dr. Astha Goel and Others v. The Medical Counselling Committee & Others*** (**Writ Petition (Civil) No. 409 of 2022 and other connected petitions, decided on 10.06.2022**)**,** by which it is observed and held that even after the seats remained vacant, the deadline to grant admissions in postgraduate cannot be extended.

8. We have heard learned counsel for the respective parties at length.

At the outset, it is required to be noted that the respective original writ petitioners were granted admissions by the private institutions/colleges in the postgraduate course illegally. Their

admissions can be said to be backdoor. The admissions in the postgraduate course were required to be made only through counselling by the Directorate and the counselling was to be done with respect to number of seats intimated by the concerned institutions/colleges. The admissions in the concerned institutions/colleges were required to be given/granted as per the merit only. As per the procedure and regulations, if after the first counselling the seats remained vacant, there shall be second round of counselling and then mop up counselling to fill up the vacant seats intimated. Every time the institutions/colleges were required to intimate the Directorate the particulars about the vacant seats and those vacant seats were required to be filled in on merits by the Directorate through counselling. The last date and the time for granting admission was 4:30 p.m. on 31.05.2018. In the present case, in the mop up round of counselling, the original writ petitioners did participate but could not secure admission on merits in the respective colleges/institutions in which subsequently they got admissions through backdoor. If the original writ petitioners were so much meritorious, they would have got admissions in the respective colleges/institutions on merits through mop up round conducted by the Directorate. During the mop up round, they could not get admissions in the respective private institutions/colleges, that itself is suggestive that they were not having merit to get admissions in the institutions/colleges in which subsequently

they got admissions. Therefore, the submission on behalf of the private institutions and even the students that they were meritorious students and the merit is not given go bye cannot be accepted.

9. In the present case, though required, the private institutions/colleges did not intimate to the Directorate/State Government with respect to seats remained vacant. Without any intimation to the Directorate/State Government, the private institutions/colleges unilaterally granted admission to the original writ petitioners on 31.05.2018 after 4:30 p.m., which was not permissible at all. No admission could have been given after 4:30 p.m. on 31.05.2018. It is required to be noted that nothing is on record that any other students were given any opportunity to apply for admissions in the respective institutions/colleges for admission on the seats remained vacant. It is not appreciable how the original writ petitioners came to know that at 4:30 p.m. on 31.05.2018, the seats have remained vacant in the institutions/colleges. The only inference can be that the institutions and the students were hands in glove and the students got admissions illegally.

10. The submission on behalf of the institutions that the seats remained vacant and therefore the same could have been wasted and therefore admissions were given cannot be accepted. In the case of ***Dr. Astha Goel (supra)***, it is observed and held that even after some seats

remain vacant on the last date of admissions, the date for admissions cannot be extended. In the said decision, this Court considered its earlier decisions in the case of ***Supreet Batra and Others v. Union of India and Others, (2003) 3 SCC 370*** and in the case of ***Education Promotion Society for India v. Union of India, (2019) 7 SCC 38***. In paragraphs 10.2 and 10.3, it is observed and held as under:

> "10.2 At this stage, the decisions of this Court in the case of Supreet Batra and Ors. (supra) and Education Promotion Society for India and Anr. (supra) are required to be referred to.
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> In the case of Supreet Batra and Ors. (supra), it is observed and held that even if some seats remain vacant, the students cannot be admitted mid-term. In paragraph 7, it is observed and held as under: -
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> > "7. When a detailed scheme has been framed through orders of this Court and the manner in which it has to be worked out is also indicated therein, we do not think that if in a particular year there is any shortfall or a certain number of seats are not filled up, the same should be done by adopting one more round of counselling because there is no scope for the third round of counselling under the Scheme. It would not be advisable to go on altering the Scheme as and when seats are vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. Out of about 1600 seats, if 200 seats are not filled up for various reasons and such not filled-up seats were much less in the earlier years, we do not think it should result in the third round of counselling. If that process is to be adopted then there will be again vacancies and further filling up of the seats falling vacant will have to be undertaken. In that process, it will become endless until all the seats under the all-India quota are filled up. That is not the object of the Scheme formulated by this Court. The object was to achieve a broad-based equality as indicated by us at the outset and we do not think that any steps have to 13 be taken for altering the Scheme. We have taken identical view in the decision in Neelu Arora v. Union of India [(2003) 3 SCC 366] and connected matters disposed of on 24-1- 2003. Moreover, this Court in Medical Council of India v. Madhu Singh [(2002) 7 SCC 258] has taken the view that there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. If these aspects are borne in mind, we do not think any reliefs as sought for by

the petitioners can be granted under these petitions. These writ petitions shall stand dismissed."

10.3 In the case of Education Promotion Society for India and Anr. (supra), the writ petitioners like the petitioners in the present case prayed for extension of time schedule and prayed for the additional counselling. This Court negated the same. This Court also took the note of the fact that every year large number of non-clinical seats remain vacant because many graduate doctors do not want to do postgraduation in non-clinical subjects. Thereafter, it is observed and held that merely because the seats are lying vacant, is not a ground to grant extension of time and grant further opportunity to fill up vacant seats. It is observed that the schedule must be followed. While holding so, it is observed in paragraph 6 as under: -

"6. In this case the petitioners want a general extension of time not on account of any particular difficulty faced by any individual college or university but generally on the ground that a large number of seats for the PG courses are lying 14 vacant. It is stated that more than 1000 seats are lying vacant. In the affidavit filed by the UOI it is mentioned that as far as deemed universities are concerned there are 603 seats lying vacant. However, it is important to note that out of 603 seats lying vacant only 31 are in clinical subjects and the vast majority (572) that is almost 95% of the seats are lying vacant in non-clinical subjects. There is no material on record to show as to what is the situation with regard to the remaining 400-500 seats. This Court however can take judicial notice of the fact that every year large number of non-clinical seats remain vacant because many graduate doctors do not want to do postgraduation in non-clinical subjects. Merely because the seats are lying vacant, in our view, is not a ground to grant extension of time and grant further opportunity to fill up vacant seats. The schedule must be followed. If we permit violation of schedule and grant extension, we shall be opening a pandora's box and the whole purpose of fixing a time schedule and laying down a regime which strictly adheres to time schedule will be defeated."

10. Applying the law laid down by this Court in the aforesaid decisions, even if on the last date of admission, seats remained vacant was no ground by the institutions/colleges to grant admissions unilaterally and that too without intimating the vacant seats to the Directorate.

11. Now so far as the prayer on behalf of the institutions/colleges and the respective original writ petitioners to permit them to continue the course and/or to declare their results as they have completed their studies/course is concerned, the said prayer is required to be rejected outright. It is required to be noted that all the original writ petitioners continued their studies/course pursuant to the interim order passed by the High Court. So far as the State is concerned, the State promptly took a decision to annul/cancel their admissions on the ground that their admissions were absolutely illegal. As such, the High Court ought not have passed such an interim order directing to grant admissions or continue with admission/course. The interim order passed by the High Court is not legally sustainable. As per the settled position of law, nobody can be permitted to take the advantage of the order passed by the Courts.

11.1 Even otherwise, once it is found that the respective original writ petitioners were granted admissions illegally and their admissions are backdoor, thereafter to allow them to continue their course shall be perpetuating the illegality. Similar prayers have been consistently denied by this Court in catena of decisions (See ***Abdul Ahad (supra) & Dr. Astha Goel (supra)***). In the case of ***Guru Nanak Dev University v.***

Parminder Kr. Bansal, (1993) 4 SCC 401, in paragraph 7, it is observed and held as under:

> "**7.** Shri Gambhir is right in his submission. We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions."

11.2 Similar observations have been made by this Court in the case of ***K.S. Bhoir v. State of Maharashtra, (2001) 10 SCC 264***.

11.3 In the case of ***Mahatma Gandhi University v. GIS Jose, (2008) 17 SCC 611***, it is observed and held by this Court that the misplaced sympathies should not have been shown in total breach of the rules.

11.4 In the case of ***CBSE v. Sheena Peethambaran, (2003) 7 SCC 719***, in paragraph 6, it is observed and held as under:

> **"6.** This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions….."

12. Applying the law laid down by this Court in the aforesaid decisions, the prayer on behalf of the institutions/students to allow them to complete their course is not required to be accepted. As observed hereinabove, the undue sympathy would lead to perpetuating the illegality and giving premium to the students who got admissions illegally.

13. In view of the above and for the reasons stated above, the impugned common judgment and order passed by the High Court directing the admissions of the respective original writ petitioners and quashing and setting aside communication dated 6.6.2018 issued by the Directorate/State Government annulling/cancelling the admissions of the original writ petitions is unsustainable and the same deserves to be quashed and set aside and is accordingly hereby quashed and set aside. Consequently, the writ petitions preferred by the original writ petitioners stand dismissed and communication dated 6.6.2018 issued by the Directorate annulling/cancelling the admission of the original writ petitioners in the postgraduate course in the respective private institutions/colleges is hereby restored.

14. The instant appeals are allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

……J.
[M.R. SHAH]

NEW DELHI;
OCTOBER 21, 2022.

……J.
[M.M. SUNDRESH]